STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

In re: Eversource Energy 2018 Energy Service Solicitation

Docket No. DE 18-002

MOTION
FOR CLARIFICATION AND, IN THE ALTERNATIVE, REHEARING
OF ORDER NO. 26,208
OF SPRINGFIELD POWER LLC, DG WHITEFIELD LLC,
BRIDGEWATER POWER COMPANY L.P.,
PINETREE POWER TAMWORTH, LLC AND PINETREE POWER, LLC

Pursuant to Admin. Rules Puc 203.07 and 203.33 as well as RSA 541:3, Springfield Power LLC ("Springfield"), DG Whitefield LLC ("Whitefield"), Bridgewater Power Company L.P. ("Bridgewater"), Pinetree Power LLC ("Pinetree") and Pinetree Power Tamworth LLC ("Pinetree Tamworth") (collectively, "Intervenors" or "Wood Plants") file this motion for clarification and, in the alternative, rehearing ("Motion") of the Commission's January 11, 2019 Order No. 26,208 ("Order").

I. Introduction.

In its Order, the Commission held that Eversource's November 6, 2018 solicitation and the Wood Plants' November 16, 2018 proposals "do not match, and therefore we do not have a final form of agreement, whether signed or unsigned, submitted for our review."[1] The Order also made certain findings regarding the conformity of various proposed terms in order to facilitate the implementation of RSA 362-H.[2] Since the issuance of the Order, the Wood Plants have

1 Order, p. 18.

2 *See, e.g.*, Order, p. 21.

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submitted to Eversource their January 31, 2019 proposals,[3] which fully conform to the requirements of RSA 362-H as further clarified by the Order. However, Eversource has not informed the Wood Plants of any non-conforming statutory terms in the proposals, or the absence of any statutorily required terms (as requested by the Wood Plants), nor has it selected these proposals as the mandated agreements, nor has it submitted them to the Commission for its RSA 362-H review.

Consistent with the language and purpose of the Order to facilitate the implementation of RSA 362-H, and in light of the fact that the proposals conform, the Wood Plants request that the Commission clarify certain issues in its Order.

Alternatively, for good reason shown, the Wood Plants move for rehearing of the Order on the reasons set forth herein.

Ultimately, if the Commission determines that Eversource is failing or omitting to do anything required of it by law, then, pursuant to RSA 374:41 it should lay the supporting facts before the New Hampshire Attorney General and direct him immediately to begin an action in the name of the State praying for appropriate relief by mandamus, injunction or otherwise.

II. Statement of Facts.

On September 13, 2018, Senate Bill 365 was enacted by the New Hampshire General Court and codified at RSA 362-H.[4] In enacting RSA 362-H, the General Court determined that it was in the public interest to promote the continued operation of, and the preservation of employment and environmental benefits associated with certain renewable electric generation

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3 The chronology resulting in the January 31, 2019 proposals is described below.

4 SB 365, 2018 N.H. Laws Ch. 379, An Act relative to the use of renewable generation to provide fuel diversity, *codified at* N.H. Rev. Stat. Chapter 362-H.

facilities, including those of the Wood Plants, and thereby to promote fuel diversity as part of the state's overall energy policy.[5]

To implement this policy, RSA 362-H requires Eversource to purchase the Wood Plants' energy pursuant to a statutory process set forth in RSA 362-H:2, I-V, which mandates power purchase agreements.[6] The process begins with Eversource's solicitation, which "shall inform eligible facilities of the opportunity to submit a proposal to enter into a power purchase agreement" for its energy purchase and must include certain required terms.[7] Thus, in response to Eversource's November 6, 2018 solicitation ("November 6, 2018 Solicitation"), the Wood Plants had the opportunity to submit proposals to Eversource for the purchase of their energy, which likewise would have to include certain required terms.[8] Upon submission of the Wood Plants' November 16, 2018 proposals ("November 16, 2018 Proposals"), Eversource was required to "select" them as the mandated power purchase agreements so long as they conformed to the provisions of RSA 362-H.[9] Thereafter, Eversource was required to "submit" those agreements to the Commission for its RSA 362-H conformity review.[10]

The Commission correctly recognized in its Order that RSA 362-H "requires electric distribution companies to purchase the net energy output of any eligible biomass or municipal

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5 2018 N.H. Laws Ch. 379:1 (Findings). *See also* Order, pp. 1-2 (quoting the entire "Findings" of the General Court).

6 RSA 362-H:2 is captioned, "Purchased Power Agreements." *See also* Order, pp. 2-4 (quoting the entire statutory process of RSA 362-H:2).

7 RSA 362-H:2, I.

8 RSA 362-H:2, II.

9 RSA 362-H:2, III ("shall select").

10 RSA 362-H:2, III ("shall submit"); RSA 362-H:2, IV ("shall be subject to review").

waste facility located in its service territory," and that Eversource must "offer to purchase the net energy output of any eligible facility of its service territory."[11] The Commission also explained that "RSA 362-H:2, I(a) describes the required transaction as one in 'which the electric distribution company would purchase an amount of energy from the eligible facility.'"[12] As such, the only way to effectuate the purposes of RSA 362-H is for Eversource to act consistently with the statutory requirements: *i.e.*, for Eversource to select statutorily conforming proposals, to submit those agreements to the Commission for its review and to purchase the net energy output from the eligible facilities.

However, for the reasons described in its Petition,[13] Eversource has sought to thwart the letter and intent of RSA 362-H, has refused to select and submit for the Commission's review the November 16, 2018 Proposals (and now the January 31, 2019 proposals) as required in RSA 362-H, and has instead chosen to obstruct the mandatory purchase of energy that is required by RSA 362-H.

A. The Wood Plants' December 17, 2018 Motion for Determination.

On December 17, 2018, the Wood Plants filed a *Motion for Determination that Agreements Conform with RSA 362-H and to Direct Eversource to Comply with RSA 362-H* ("Motion for Determination") because Eversource declined to comply with the requirements of RSA 362-H. Among other things, Eversource claimed that the November 16, 2018 Proposals "varied from the terms and conditions contained in Eversource's solicitation," and stated that it "did not intend to enter into formal, bilateral power purchase agreements" with the Wood Plants

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11 Order, pp. 1, 3 (citing RSA 362-H).

12 Order, p. 19.

13 Eversource Petition filed on December 4, 2018.

and that it would only enter into agreements if the Commission ordered it do so pursuant to a process "akin to the 'rate orders' issued by this Commission in 1980's, under the Public Utility Regulatory Policies Act ('PURPA')."[14]

Because Eversource declined to comply with RSA 362-H by refusing to select and submit the November 16, 2018 Proposals as the mandated agreements, the Wood Plants requested that the Commission review the November 16, 2018 Proposals, determine whether they conform with RSA 362-H, and if so, order Eversource to comply with RSA 362-H by selecting and submitting them to the Commission as the mandated agreements.[15]

B. The Order.

On January 11, 2019, the Commission issued its Order. The Order rejected all of Eversource's reasons for refusing to comply with RSA 362-H. The Order recognized that RSA 362-H required that Eversource purchase the net energy output of the eligible facilities and that the Commission was not authorized by RSA 362-H to impose customer protection terms. Furthermore, the Order held that Eversource's request for the imposition of additional customer protection provisions in the form of an escrow account, the effect of which limited payment to a rate other than that required by the statute, was contrary to RSA 362-H.

With regard to the lack of a single conforming agreement selected by Eversource and submitted to the Commission for its review, the Commission stated:

> Under the statute, Eversource "shall submit all eligible facility agreements to the commission as part of its submission for periodic approval of its residential electric customer default service supply solicitation." RSA 362-H:2, III. Eversource in its petition presented its original solicitation and proposed governing power purchase terms as well as the Wood Plants' mark-up of those proposed terms. The two forms of proposed agreements do not match, and

14 *See, e.g.*, Eversource Petition, ¶¶ 6-7.

15 *See, e.g.*, Motion for Determination, p. 21.

> therefore we do not have a final form of agreement, whether signed or unsigned, submitted for our review.
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> Under the terms of the statute, the Commission is authorized to review "eligible facility agreements" that have been submitted by the EDC. RSA 362-H:2, III and IV. Accordingly, we are not authorized to act until Eversource selects proposals from eligible facilities that conform to the statute and submits agreements to the Commission for review. RSA 362-H:2, III and IV.
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> We find no express authority in RSA 362-H for the Commission to order Eversource to sign agreements with eligible facilities, or to order Eversource to purchase power from the eligible facilities in the absence of any agreement. As a result, we deny the Wood Plants' request that we order Eversource to sign the Wood Plants' proposed power purchase agreements.[16]

With regard to the Wood Plants' request that the Commission review the November 16, 2018 Proposals for conformity with, and determine that they conform to, RSA 362-H, it stated:

> While we currently do not have any "eligible facility agreements" before us, as explained above, Eversource has submitted two forms of potential agreement to the Commission. In order to facilitate implementation of the statute we provide the following findings regarding whether certain proposed terms would conform with the statute if presented to us by an EDC as part of an "eligible facility agreement," pursuant to RSA 362-H:2, III.[17]

With regard to the recovery of over-market payments, which became a subsequent discussion point between the Wood Plants and Eversource, the Commission stated:

> RSA 362-H2, V expressly allows EDCs to recover any above-market costs of purchases from eligible facilities as part of a nonbypassable charge to all electric delivery customers. While a federal preemption challenge to the legality of RSA 362-H remains unresolved, however, we are not willing to separately order recovery of stranded costs from Eversource customers for the reasons explained.[18]

With regard to the customer protections proposed by Eversource, the Commission stated:

> In order to protect its customers and shareholders, Eversource propose to either: (1) escrow the over-market portion of the adjusted energy rate so that it is not paid

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16 Order, p. 18 (emphasis added).

17 Order, p. 21 (emphasis added).

18 Order, pp. 23-24 (emphasis added).

> to the Wood Plants, unless and until RSA 362-H is no longer being challenged on the basis of federal preemption, or (2) require the Wood Plants to provide letters of credit as security to pay customers back for the over-market payments received during the period of time that statute is challenged, if it is ultimately found to be unconstitutional. We have already determined that the first option is contrary to the terms of RSA 362-H. The second option would likely impose significant additional expense and uncertainty upon the very eligible facilities the statute is designed to benefit, and therefore it is also inconsistent with RSA 362-H.[19]

Instead of requiring such provisions, the Commission "encourage[d] the parties to consider voluntary inclusion of appropriate customer protections".[20]

However, despite the Wood Plants' requests in their Motion for Determination,[21] the Commission did not expressly review the November 16, 2018 Proposals and/or determine whether they conform with the requirements of RSA 362-H.

C. Eversource now claims that the Commission has created a "roadblock" to the implementation of RSA 362-H.

On January 14, 2019, Eversource served a letter upon the Wood Plants, which described the Order, *inter alia*, as a "roadblock" to the implementation of RSA 362-H:[22]

> In addition to leaving critical issues unanswered, the Commission inserted a very significant new roadblock to the timely implementation of RSA Chapter 362-H. Despite the requirement in RSA 362-H:2, V that "The electric distribution company shall recover the difference between its energy purchase costs and the market energy clearing price through a nonbypassable delivery services charge applicable to all customers in the utility's service territory," the Commission expressly held that such recovery may not be authorized if the law is ultimately found to be unconstitutional:[23]

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19 Order, pp. 24-25 (emphasis added).

20 Order, p. 25.

21 *See, e.g.*, Motion for Determination, p. 21.

22 Attached hereto as **Exhibit 1**, and incorporated as if restated in full, is a true and accurate copy of Eversource's January 14, 2019 letter.

23 **Exhibit 1**, January 14, 2019 letter, p. 2 (emphasis added).

Eversource continued, stating that the Commission has "refused to implement any of the customer protection measures suggested by Eversource, the Office of Consumer Advocate, and the New England Ratepayers Association to work around this roadblock that it created."[24]

Taking the position that the Commission created a "roadblock" to the implementation of RSA 362-H, Eversource asked: "Would the Wood IPPs agree to inclusion of a customer protection provision in purchase/sale arrangements under RSA Chapter 362-H?"[25] Eversource requested the Wood Plants' response within three days:

> Please let me know by Thursday, January 17 whether your clients are willing to voluntarily accept inclusion of a customer protection mechanism in any arrangement for the purchase and sale of energy under RSA Chapter 362-H so that the necessary arrangements to implement SB 365 can be accomplished in a timely manner.[26]

D. The Wood Plants agreed to the voluntary inclusion of a customer protection provision in the power purchase agreements mandated by RSA 362-H.

On January 17, 2019, the Wood Plants responded to Eversource, within the time requested.[27] The Wood Plants explained that "[t]he Order does not create any 'roadblocks' to the implementation of RSA 362-H. Rather, it helps bridge the gap between the parties' positions by resolving most of the issues that Eversource raised in its Solicitation and Petition."[28] In so

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24 **Exhibit 1**, January 14, 2019 letter, p. 3 (emphasis added).

25 **Exhibit 1**, January 14, 2019 letter, p. 3 (emphasis added).

26 **Exhibit 1**, January 14, 2019 letter, p. 3 (emphasis added).

27 Attached hereto as **Exhibit 2**, and incorporated as if restated in full, is a true and accurate copy of the Wood Plants' January 17, 2019 letter.

28 **Exhibit 2**, January 17, 2019 letter, p. 1 (emphasis added).

explaining, the Wood Plants identified each of the issues the Commission addressed in its Order regarding the conformity of proposed terms.[29]

The Wood Plants then answered Eversource's question with a -- **'yes'** -- they would be willing to agree to the inclusion of customer protection provisions, even though such provisions were not required by RSA 362-H and were, in fact, contrary to its underlying policy. In answering 'yes,' the Wood Plants explained:

> Notwithstanding the Commission's determination that Eversource's proposed escrow or letter of credit provisions are inconsistent with RSA 362-H, Eversource has asked whether Intervenors would be willing to include customer protection provisions in a power purchase agreement under RSA 362-H. The entire purpose of RSA 362-H was to ensure the eligible facilities would be able to continue to operate as important state renewable resources, which requires sufficient revenues to maintain such operations. In the Order, the Commission quoted the General Court's findings that "it is in the public interest to promote the continued operation of, and the preservation of employment and environmental benefits associated with these sources of indigenous-fueled renewables, and thereby promote fuel diversity as part of the state's overall energy policy." Order, p. 2.
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> While an indefinite delay of the purchase prices in RSA 362-H would not allow for the continued operation of the eligible facilities, Intervenors are willing to agree to the voluntary inclusion of a 60-day customer protection provision beginning on February 1, 2019 in order to allow additional time for a determination on the constitutionality of RSA 362-H. Under this voluntary customer protection provision, the eligible facilities would have the choice to utilize any of the commonly used forms of security that have been accepted in the industry in power purchase agreements (*e.g.*, letters of credit, parent guarantees, and/or cash collateral) for the expected above-market portion for a 60-day period, or have the above market portion for that 60-day period escrowed. The 60-day voluntary customer protection would remain in place for one year, after which the security or escrow would terminate and be returned to the eligible facility.[30]

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29 **Exhibit 2**, January 17, 2019 letter, pp. 1-3.

30 **Exhibit 2**, January 17, 2019 letter, p. 3 (emphasis added).

The Wood Plants concluded their January 17, 2019 letter to Eversource by stating that they "will separately submit today directly to Eversource revised Forms of Confirmation and Governing Terms that conform to the requirements of RSA 362-H as determined by the Commission in the Order."[31]

E. The Wood Plants' January 17, 2019 resubmitted proposals.

On January 17, 2019, the Wood Plants each submitted directly to Eversource revised proposals in conformance with RSA 362-H as determined by the Order, as follows:

- January 17, 2019 Bridgewater proposal including Cover Letter, Confirmation and Governing Terms ("Bridgewater January 17, 2019 Proposal");[32]
- January 17, 2019 Springfield proposal including Cover Letter, Confirmation and Governing Terms ("Springfield January 17, 2019 Proposal");[33]
- January 17, 2019 Whitefield proposal including Cover Letter, Confirmation and Governing Terms ("Whitefield January 17, 2019 Proposal");[34]
- January 17, 2019 Pinetree proposal including Cover Letter, Confirmation and Governing Terms ("Pinetree January 17, 2019 Proposal");[35] and

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31 **Exhibit 2**, January 17, 2019 letter, p. 3.

32 Attached hereto as **Exhibit 3**, and incorporated as if restated in full, is a true and accurate copy of the Bridgewater's January 17, 2019 Proposal.

33 Attached hereto as **Exhibit 4**, and incorporated as if restated in full, is a true and accurate copy of the Springfield January 17, 2019 Proposal.

34 Attached hereto as **Exhibit 5**, and incorporated as if restated in full, is a true and accurate copy of the Whitefield January 17, 2019 Proposal.

35 Attached hereto as **Exhibit 6**, and incorporated as if restated in full, is a true and accurate copy of the Pinetree January 17, 2019 Proposal.

- January 17, 2019 Pinetree Tamworth proposal including Cover Letter, Confirmation and Governing Terms ("Pinetree Tamworth January 17, 2019 Proposal")[36] (collectively, "January 17, 2019 Proposals").

The January 17, 2019 Proposals are each materially the same, with differences related solely to specifying the identity of the Wood Plants.

In their January 17, 2019 Proposals, the Wood Plants reminded Eversource that pursuant to New Hampshire law, it is obligated to "'select' all proposals from eligible facilities that conform to the requirements of' RSA 362-H."[37] The Wood Plants further requested that "[i]f there are any terms submitted herein that do not conform to the requirements of RSA 362-H as determined by the Order, please let me know promptly so that we can work to ensure the agreements can take effect by February 1, 2019."[38] Finally, the Wood Plants informed Eversource that if it did not identify any terms that do not conform to the requirements of RSA 362-H as determined by the Order, then "we expect that Eversource 'shall submit all eligible facility agreements to the commission' for its conformity review so that the agreements can take effect by February 1, 2019."[39]

On January 18, 2019, Eversource requested word.doc versions of the January 17, 2019 Proposals to facilitate review and comment, which the Wood Plants provided.[40]

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36 Attached hereto as **Exhibit 7**, and incorporated as if restated in full, is a true and accurate copy of the Pinetree Tamworth January 17, 2019 Proposal.

37 **Exhibits 3-7**, Cover Letter (emphasis added).

38 **Exhibits 3-7**, Cover Letter (emphasis added).

39 **Exhibits 3-7**, Cover Letter (emphasis added).

40 Attached hereto as **Exhibit 8**, and incorporated as if restated in full, is a true and accurate copy of the Wood Plants' e-mail attaching word.docs of the January 17, 2019 Proposals.

F. Eversource did not identify any non-conforming terms in the January 17, 2019 Proposals, but it did request revisions to certain of the business terms.

On January 23, 2019, Eversource reiterated its belief that the Commission had imposed a "roadblock" preventing the implementation of RSA 362-H.[41] In this correspondence, Eversource requested that the Wood Plants agree to the kind of customer protections that RSA 362-H explicitly does not require, and that the Commission held would be counter to the very purpose of the statute.[42] Moreover, Eversource's letter did not identify any terms in the January 17, 2019 Proposals that did not conform to the requirements of RSA 362-H, or the absence of any statutorily required terms.

On January 28, 2019, Eversource requested revisions to certain of the non-statutory business terms of the January 17, 2019 Proposals.[43] Notably, Eversource's January 28th letter did not identify any non-conforming statutory terms, or the absence of any statutorily required terms of the January 17, 2019 Proposals.

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41 Attached hereto as **Exhibit 9**, and incorporated as if restated in full, is a true and accurate copy of Eversource's January 23, 2019 letter.

42 *See* Order, pp. 24-25 ("We have already determined that the first option is contrary to the terms of RSA 362-H. The second option would likely impose significant additional expense and uncertainty upon the very eligible facilities the statute is designed to benefit, and therefore is also inconsistent with RSA 362-H.").

43 Attached hereto as **Exhibit 10**, and incorporated as if restated in full, is a true and accurate copy of Eversource's January 28, 2019 e-mail attaching a first-revised set of word.docs regarding the January 17, 2019 Proposals.

On January 30, 2019, Eversource requested further revisions to certain business terms of the January 17, 2019 Proposals.[44] Again, Eversource did not identify any non-conforming terms, or the absence of any statutorily required terms.

G. On January 31, 2019, the Wood Plants accepted nearly all of Eversource's revisions, and resubmitted yet another set of conforming proposals.

On January 31, 2019, after incorporating nearly all of Eversource's requested revisions, the Wood Plants each resubmitted directly to Eversource another set of revised proposals as follows:

- January 31, 2019 Bridgewater proposal including Cover Letter, Transaction Confirmation and Governing Terms ("Bridgewater January 31, 2019 Proposal");[45]
- January 31, 2019 Springfield proposal including Cover Letter, Transaction Confirmation and Governing Terms ("Springfield January 31, 2019 Proposal");[46]
- January 31, 2019 Whitefield proposal including Cover Letter, Transaction Confirmation and Governing Terms ("Whitefield January 31, 2019 Proposal");[47]

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44 Attached hereto as **Exhibit 11**, and incorporated as if restated in full, is a true and accurate copy of Eversource's January 30, 2019 e-mail attaching second-revised set of word.docs regarding the January 17, 2019 Proposals.

45 Attached hereto as **Exhibit 12**, and incorporated as if restated in full, is a true and accurate copy of the Bridgewater January 31, 2019 Proposal.

46 Attached hereto as **Exhibit 13**, and incorporated as if restated in full, is a true and accurate copy of the Springfield January 31, 2019 Proposal.

47 Attached hereto as **Exhibit 14**, and incorporated as if restated in full, is a true and accurate copy of the Whitefield January 31, 2019 Proposal.

- January 31, 2019 Pinetree proposal including Cover Letter, Transaction Confirmation and Governing Terms ("Pinetree January 31, 2019 Proposal");[48] and
- January 31, 2019 Pinetree Tamworth proposal including Cover Letter, Transaction Confirmation and Governing Terms ("Pinetree Tamworth January 31, 2019 Proposal")[49] (collectively, "January 31, 2019 Proposals").

Each of the January 31, 2019 Proposals are materially the same, with differences related solely to specifying the identity of the Wood Plants.

In their cover letters enclosing the January 31, 2019 Proposals, the Wood Plants stated that they incorporated "all of Eversource's January 28th proposed revisions and the majority of its January 30th business terms revisions" and that they further included "voluntary security measures [*i.e.*, customer protections] as Section 5.5 of the Governing Terms,"[50] providing that:

> Upon Buyer's written request, Seller shall provide Buyer with collateral in the form of cash, letter(s) of credit, suitable guaranty, or other type of reasonable security mutually acceptable to the parties in an amount equal to the estimated difference between Buyer's Energy Price and the Market Energy Clearing Price within ten (10) business days following receipt of such written request. Such security may only be exercised in the event that Buyer is required through a final and non-appealable order of the NHPUC to refund to its ratepayers the amount Buyer paid to the Seller above the Market Energy Clearing Price. The collateral would remain in place for the earlier of the Term or the date that the FERC issues a determination in Docket No. EL19-10 on the constitutional validity of RSA Chapter 362-H.[51]

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48 Attached hereto as **Exhibit 15**, and incorporated as if restated in full, is a true and accurate copy of the Pinetree January 31, 2019 Proposal.

49 Attached hereto as **Exhibit 16**, and incorporated as if restated in full, is a true and accurate copy of the Pinetree Tamworth January 31, 2019 Proposal.

50 **Exhibits 12-16**, Cover Letter (emphasis added). *See also* **Exhibits 12-16**, Section 5.5 of the Governing Terms (voluntary security measures).

51 **Exhibits 12-16**, Governing Terms, p. 13 (Section 5.5 Security).

In submitting their January 31, 2019 Proposals, the Wood Plants again reminded Eversource that RSA 362-H required that it:

> "shall select all proposals from eligible facilities that conform to the requirements of this section." *See* RSA 362-H:2, III (emphasis added). Because this re-submitted proposal conforms to the provisions of RSA 362-H as further clarified by the Order, we expect that Eversource will select it as the mandated power purchase agreement, and that it will submit this "eligible facility agreement[] to the commission" for its review. *See* RSA 362-H:2, III.[52]

On January 31, 2019, in an e-mail, Eversource requested word.doc versions of the January 31, 2019 Proposals for comparison purposes, which the Wood Plants provided.[53] In the same e-mail, Eversource proposed a draft of an escrow provision as its form of security -- in lieu of that proposed by the Wood Plants in Section 5.5 of the Governing Terms -- and asked the Wood Plants "to consider" it.[54] The Eversource escrow provision pays the ISO-NE market energy price (*i.e.*, the "Market Energy Clearing Price") to the Wood Plants and escrows the difference between that rate and the statutorily required "adjusted energy rate." However, the Commission's Order already determined that such an escrow provision is "contrary to the terms of RSA 362-H."[55] In effect, Eversource's escrow provision substitutes the short-term ISO-NE energy rate for the statutory rate.

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52 **Exhibits 12-16**, Cover Letter.

53 Attached hereto as **Exhibit 17**, and incorporated as if restated in full, is a true and accurate copy of the Wood Plants' e-mail attaching word.docs of the January 31, 2019 Proposals. Also included in this e-mail chain is Eversource's proposed escrow provision in lieu of what the Wood Plants proposed in Section 5.5 of the January 31, 2019 Proposals' Governing Terms.

54 **Exhibit 17**.

55 Order, p. 24.

H. As of February 6, 2019, Eversource still refuses to comply with RSA 362-H and continues to interpret the Order as a "roadblock" to the implementation of RSA 362-H.

On February 6, 2019, Eversource again stated its position that the Commission had imposed a "roadblock" preventing the implementation of RSA 362-H. Eversource also moved away from asking the Wood Plants "to consider" its January 31, 2019 proposed escrow provision and instead stated that it would not select any proposals unless they included the escrow provision that it now demands, which this Commission has determined is not required by, and in fact is directly contrary to the purpose of RSA 362-H.[56]

III. Motion for Clarification.

As set forth in their requests for relief and presented herein, the Wood Plants request that the Commission clarify the following issues arising from the Order.

A. The January 31, 2019 Proposals conform to the requirements of RSA 362-H.

The Order highlighted the fact that "[t]he two forms of proposed agreement do not match, and therefore we do not have a final form of agreement, whether signed or unsigned, submitted for our review."[57] There is now agreement about all language in the form of agreements, other than acceptance of the escrow provision demanded by Eversource, which is a provision that the Commission already determined is "contrary to the terms of RSA 362-H."[58]

Accordingly, the Wood Plants request that the Commission clarify, that while the Order stated it could find no express authority to order Eversource to sign agreements, that does not

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56 Attached hereto as **Exhibit 18**, and incorporated as if restated in full, is a true and accurate copy of Eversource's February 6, 2019 letter.

57 Order at 18.

58 Order, p. 24.

preclude the Commission from finding that the January 31, 2019 Proposals conform to the requirements of RSA 362-H, "whether signed or unsigned". Furthermore, to give effect to the General Court's policy determinations in RSA 362-H chapter law, 2018 Laws, Ch. 371:1, regarding the need to promote the continued operation of the Wood Plants and to facilitate the implementation of RSA 362-H, particularly where all terms are in agreement (except for Eversource's non-statutory escrow term, which the Commission held is contrary to the statute), the Commission should clarify its Order to state that the Wood Plants' January 31, 2019 Proposals are conforming, and hence, they are the agreements mandated by the statute.

B. Eversource is required to select and submit an eligible facility agreement to the Commission for its "conformity review," and the failure to do so is a violation of RSA 362-H.

In the Order, the Commission assisted the parties by addressing a number of statutory interpretation issues raised by Eversource pertaining to "whether certain proposed terms are consistent with RSA 362-H".[59] To that end, the Order made the following determinations: (i) "the plain meaning of RSA requires EDCs to offer to purchase energy only, and not capacity";[60] (ii) the "adjusted energy rate" is based on the residential retail default energy rate approved by the Commission;[61] (iii) mandating QF status as an agreement condition is inconsistent with RSA 362-H;[62] and (iv) the agreement cannot substitute real time energy prices in lieu of the "adjusted energy rate" as the purchase price.[63]

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59 Order, p. 19.

60 Order, p. 20.

61 Order, pp. 20-21, 23.

62 Order, p. 21-22.

63 Order, pp. 22-23.

The Order also informed Eversource that RSA 362-H does not authorize the Commission to impose "customer protection terms" in an agreement under RSA 362-H.[64] The Order noted that the law does not mandate an eligible facility's participation in the ISO-NE energy markets, but as a matter of business term implementation asked the parties to adopt terms regarding compliance with ISO-NE rules.[65] The Order also determined that RSA 362-H: 2, V expressly provides for the recovery of Eversource's above-market costs incurred under a RSA 362-H agreement through a nonbypassable charge, and the Commission will not separately order such recovery.[66]

On January 17 and January 31, 2019, the Wood Plants submitted revised proposals consisting of a confirmation and governing terms to Eversource that incorporate the Commission's determinations on energy-only sales, the proper use and determination of adjusted energy rate, and which eliminated Eversource's real-time energy provision and QF requirement. The January 17, 2019 Proposals and the January 31, 2019 Proposals also included the RSA 362-H statutory provision regarding cost recovery through a nonbypassable stranded cost charge.

These proposals accepted almost all of Eversource's proposed non-statutory business terms, including compliance with ISO-NE rules and practices, and billing and payment methodology through ISO-NE. In particular, the January 31, 2019 Proposals accepted all of Eversource's January 28, 2019 proposed non-statutory business terms revisions and the vast majority of its January 30, 2019 non-statutory business terms revisions, other than the escrow provision subsequently demanded by Eversource, which the Commission found was "contrary to

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64 Order, pp. 24-25.

65 Order, p. 22.

66 Order, p. 24.

the terms of RSA 362-H."[67] While the Order stated that the Commission could not impose customer protection measures and RSA 362-H does not require any such terms, the Wood Plants took to heart the Commission's suggestion that "we encourage the parties to consider voluntary inclusion of appropriate customer protections,"[68] and included in their January 31, 2019 Proposals an appropriate customer protection provision in Section 5.5 of the Governing Terms, for the Wood Plants to provide standard industry forms of security (such as cash collateral, letter of credit or a guaranty) for up to the entire term of the agreement.

In each such submission, the Wood Plants informed Eversource that their proposals were consistent with RSA 362-H and the Order. The Wood Plants also asked Eversource that, if it did not agree the proposals conformed, then it should identify any non-conforming provisions. Eversource has not identified any terms in the January 17, 2019 Proposals or the January 31, 2019 Proposals that do not conform to the requirements of RSA 362-H or identified the absence of any statutorily required terms. Yet, contrary to RSA 362-H:2, III, it has still refused to select the January 31, 2019 Proposals (and previously, the January 17, 2019 Proposals) as conforming to the requirements of RSA 362-H and has not submitted them as agreements to the Commission for its conformity review.

The Order determined that the Commission could not act on any of the Wood Plants' November 16, 2018 Proposals because the two forms of "agreement, whether signed or unsigned" submitted by Eversource "do not match".[69] The Order went on to state that Eversource must first select proposals from eligible facilities that conform to the statute and then

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67 Order, p. 24.

68 Order, p. 25.

69 Order, p. 18.

submit them to the Commission for review.[70] Consistent with the canons of statutory construction, the Commission should clarify the Order provisions regarding proposal selection and implement the General Court's policy as set out in RSA 362-H. Such clarification is necessary to prevent Eversource from avoiding compliance with the statutory process identified in the Order; *i.e.*, selecting conforming proposals for submission and thereby fulfilling its purchase obligation process under RSA 362-H.

In New Hampshire, the meaning and legislative intent of a statute is interpreted by first looking to "the language of the statute itself, and, if possible, construe[ing] that language according to its plain and ordinary meaning."[71] All parts of a statute are construed together "to effectuate its overall purpose and avoid an absurd or unjust result."[72] Words and phrases are not considered in isolation "but rather within the context of the statute as a whole."[73] "This enables us to better discern the legislature's intent and to interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme."[74]

Given Eversource's refusal to identify any non-conforming statutory provisions in the proposals, and its refusal to submit proposals that conform to the statute to the Commission, the Wood Plants request that the Commission clarify its Order to state that Eversource is required to select an eligible facility proposal that contains all the terms required under RSA 362-H and

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70 Order, p. 18.

71 *Appeal of Algonquin Gas Transmission, LLC*, 170 N.H. 763, 770 (2018), quoting *Roy v. Quality Pro Auto*, 168 N.H. 517, 519 (2016).

72 *Appeal of Algonquin*, 170 N.H. at 770, citing *LLK Trust v. Town of Wolfeboro*, 159 N.H. 734, 736 (2010) (emphasis added).

73 *Id.*

74 *Id.*

conforms with RSA 362-H, and to submit an eligible facility agreement to the Commission "whether signed or unsigned" when the eligible facility proposal contains all the terms required under RSA 362-H and conforms with RSA 362-H.[75]

Any other reading and application of the statute on this issue provides Eversource with the opportunity to delay or completely avoid the implementation of the power sales arrangements and thwart the intent of the General Court as set forth in the "legislative findings" section of the RSA 362-H chapter law, 2018 Laws, Ch. 371:1, simply by failing to act in accordance with the statute's requirements and purpose. In its "Findings," the General Court determined that the "continued operation of the state's 6 independent biomass-fired electric generating plants… [is] at risk due to energy pricing volatility." Those "Findings" concluded that it was "in the public interest to promote the continued operation of, and the preservation of employment and environmental benefits associated with these sources… and thereby promote fuel diversity as part of the state's overall energy policy." The Commission's order on clarification would give effect to this legislative intent and preclude an electric distribution company (like Eversource) from thwarting that legislative will and statutory purpose by refusing to submit the Wood Plants' conforming proposals to the Commission for its review. Giving effect to this legislative intent is required by the canons of statutory interpretation.[76]

Under the statute, and consistent with the exigent circumstances noted in the legislative findings, the Wood Plants were to begin power sales to Eversource on February 1, 2019. No such sales have commenced because Eversource has not adhered to the statutory process by

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75 *See* RSA 362-H:2, III.

76 *See Appeal of Algonquin*, 170 N.H. at 770 (statutory construction must effectuate the overall purpose and avoid an unjust result, and statutes are to be interpreted in light of the policy or purpose sought to be advanced by the statutory scheme.)

selecting and submitting the proposals for the Commission's review, now apparently delaying doing so and avoiding compliance with the statute over an unreasonable non-statutory demand that the Wood Plants accept an escrow provision that the Commission already determined was contrary to the statute. To assist in implementing the General Court's directives in RSA 362-H, based on the facts stated herein, the Commission should now review the Wood Plants' January 31, 2019 Proposals and clarify its Order to state that the Commission finds that the January 31, 2019 Proposals conform to RSA 362-H "whether signed or unsigned" and should now be implemented by Eversource. The Commission Order should also clarify that the failure to submit these conforming proposals to the Commission leaves Eversource in violation of RSA 362-H.

C. The Order does not preclude RSA 362-H:2, V rate recovery for payments made in compliance with RSA 362-H.

The Order states that that "RSA 362-H specifically anticipates … overmarket-costs and provides for recovery from customers through a nonbypassable charge" and "RSA 362-H:2, V expressly allows EDCs to recover any above market costs of purchases from eligible facilities as part of a nonbypassable charge to all electric delivery customers."[77] The confirmations in the Wood Plants' January 31, 2019 Proposals contain the statutory text from RSA 362-H:2 V on rate recovery, while the Order only notes that the Commission will not "separately order" recovery of stranded costs from Eversource customers.[78]

Eversource has characterized the Commission's refusal to separately order rate recovery as "the Commission insert[ing] **a very significant new roadblock** to the timely implementation

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77 Order, pp. 23-24.

78 Order, p. 24.

of RSA Chapter 362-H."[79] It has done so out of a fear that the preemption claim made at the Federal Energy Regulatory Commission ("FERC") by the New England Ratepayers Association ("NERA") could preclude recovery. However, FERC is not required to rule on the petition submitted by NERA. In fact, FERC has already declined to rule on NERA's petition by February 1, 2019 as requested, and even if FERC does rule, such an order in and of itself would have "no legal moment unless and until a district court adopts that interpretation".[80]

RSA 362-H is a valid New Hampshire law, and it is presently in effect. RSA 362-H must be implemented according to its terms. The position advanced by Eversource regarding rate recovery is similar to any position that could be advanced by any party concerning any law that might ever be challenged. But the mere possibility that a law might be challenged does not invalidate the existing law or the need to implement it in accordance with its express terms.

Furthermore, in the unlikely event that a court of competent jurisdiction does determine that the mandatory purchase obligations in RSA 362-H are preempted, that would not necessarily mean that rate recovery is preempted, particularly where, as here, Eversource would have purchased energy in compliance with existing law.

Accordingly, the Commission should clarify that no such "roadblock" exists because where rate recovery is already provided for by RSA 362-H:2, V and incorporated directly into the proposals, Eversource does not need a separate order on recovery from the Commission. The clarification order should also determine, as a matter of giving effect to the plain meaning of the

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79 **Exhibit 1** (Eversource letter of January 14, 2019), p. 2 (emphasis added).

80 "An order that does no more than announce the Commission's interpretation of the PURPA or one of the agency's implementing regulations is of no legal moment unless and until a district court adopts that interpretation when called upon to enforce the PURPA." *Xcel Energy Servs. Inc. v. F.E.R.C.*, 407 F.3d 1242, 1244 (D.C. Cir. 2005) (Ginsburg, J.) (quoting *Niagara Mohawk Power Corp. v. F.E.R.C.*, 117 F.3d 1485, 1488 (D.C. Cir. 1997).

statute, that Eversource cannot refuse to select otherwise conforming agreements simply because the Commission might not separately order rate recovery. Such clarifications are consistent with giving effect to the plain meaning of the statutory text and giving effect to the policy and purposes sought to be advanced by the statute.[81]

D. The Commission may direct the New Hampshire Attorney General to immediately begin an action to force Eversource to follow the law.

If, in clarifying that by failing to select conforming proposals (including now the January 31, 2019 Proposals, which conform to the statutory requirements of RSA 362-H and are in agreement on business terms, other than Eversource's January 31, 2019 demand for escrow provisions that the Commission has determined are contrary to RSA 362-H) and to submit them to the Commission for its review, or if the Commission is or otherwise becomes of the opinion that Eversource is "failing or omitting, or about to fail or omit, to do anything required of it by law … or is doing anything, or about to do anything, or permitting anything, or about to permit anything, to be done contrary to, or in violation of, law," then it should clarify that it may lay those facts before the New Hampshire Attorney General and "direct him immediately to begin an action in the name of the state praying for appropriate relief by mandamus, injunction or otherwise."[82]

IV. Motion for Rehearing.

The Wood Plants incorporate all of the preceding paragraphs of this Motion as if restated in full in regard to this motion for rehearing.

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81 *See Appeal of Algonquin*, 170 N.H. at 770.

82 RSA 374:41 (Commission May Institute).

As set forth in their requests for relief and presented herein, pursuant to RSA 541:3 and PUC 203.33, the Wood Plants respectfully move for rehearing of the Order. The Commission may grant rehearing or reconsideration for "good reason" if the moving party shows that an order is unlawful or unreasonable.[83] A successful motion must establish "good reason" by showing that there are matters that the Commission "overlooked or mistakenly conceived in the original decision,"[84] or by presenting new evidence that was "unavailable prior to the issuance of the underlying decision".[85] A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome.[86]

Eversource must not be allowed thwart the language and purpose of RSA 362-H – which requires it to select and submit conforming power purchase agreements to the Commission for its review – by imposing terms and conditions first upon its November 6, 2018 Solicitation and now after the Commission's issuance of its Order, which are contrary to the language, purpose and policy of RSA 362-H. Nor should any electric distribution company, including Eversource, be allowed to thwart the implementation of RSA 362-H by: refusing to identify any non-conforming aspects of an eligible facility proposals, including the Wood Plants' January 17, 2019 Proposals and January 31, 2019 Proposals; refusing to select and submit such proposals as the mandated agreements; blaming the Commission for imposing a purported "roadblock"; and continuing to make changes to business terms including insisting upon inclusion of an escrow account

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83 *See* RSA 541:3 and RSA 541:4. *See also Rural Telephone Companies*, Order No. 25,291 (November 21, 2011).

84 *Dumais v. State*, 118 N.H. 309, 311 (1978) (quotation and citations omitted).

85 *Hollis Telephone Inc.*, Order No. 25,088 at p. 14 (April 2, 2010).

86 *Public Service Co. of N.H.,* Order No. 25,676 at 3 (June 12, 2014); *see also Freedom Energy Logistics*, Order No. 25,810 at 4 (September 8, 2015).

provision that the Commission determined is directly contrary to the language and purpose of RSA 362-H. To permit otherwise allows an unjust, unreasonable and unlawful result relative to the requirements, language, purpose and policy of RSA 362-H.

To the extent that the Commission does not issue the requested clarifications, the Wood Plants request rehearing on each of the items presented in this Motion as stated in their requests for relief including *inter alia* because the Commission overlooked certain of the Wood Plants' requests for relief in their Motion for Determination and thereby mistakenly conceived its Order, new evidence presented herein was previously unavailable and the Order ignores the canons of statutory interpretation by failing to give effect to RSA 362-H.

A. The Commission erred by failing to review the proposals for conformity and by failing to determine that they conform with the requirements of RSA 362-H.

In their December 17, 2018 Motion for Determination, the Wood Plants requested that the Commission review the agreements for conformity and determine that they conform with the requirements of RSA 362-H.[87] However, other than noting these requests, the Commission never addressed them, and instead focused on the differences between the terms and conditions proposed in the Wood Plants' November 16, 2018 Proposals and Eversource's November 6, 2018 Solicitation.

Had the Commission reviewed the November 16, 2018 Proposals for conformity with RSA 362-H, it would have determined that they are consistent with the requirements in RSA 362-H and that Eversource's proposed additional terms and conditions (particularly the escrow

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87 Motion for Determination, p. 21 ("[The Wood Plants] respectfully request that the Commission: A. Review [the Wood Plants' November 16, 2018 Proposals] for conformity with RSA 362-H; B. Determine that [the Wood Plants' November 16, 2018 Proposals] conform with RSA 362-H;").

provision) are not consistent with such requirements. Particularly now, where there are no longer any substantive disagreements between the Wood Plants and Eversource (other than an escrow provision that the Commission determined was "contrary to the terms of RSA 362-H"), the Commission can determine on rehearing that the proposed agreements (now the January 31, 2019 Proposals) conform with the requirements of RSA 362-H and that Eversource is required to select all eligible facility proposals that contain all the terms required under RSA 362-H and which conform with RSA 362-H, and submit them to the Commission for its statutory review.

B. The Commission erred by failing to order Eversource to comply with the provisions of RSA 362-H by selecting the Wood Plants' proposals and submitting them as the mandated power purchase agreements for the Commission's RSA 362-H review.

The Commission's determination that it cannot "order Eversource to sign agreements with eligible facilities" or "order Eversource to purchase power from the eligible facilities in the absence of any agreement"[88] was in error, and contradicts the language of, and policy behind, RSA 362-H and creates an unjust result that does not effectuate the overall statutory purpose.

RSA 362-H:2 itself is captioned "Purchased Power Agreements," and it requires that Eversource "shall offer to purchase" the Wood Plants' "net energy output … in accordance with the following" process set forth in subsections I through V. The General Court's policy behind RSA 362-H is to support "at-risk" "eligible facilities" like the Wood Plants that "are important to the state's economy and jobs" as well to support "the state's overall energy policy."[89]

The statutory process mandating power purchase agreements does not require the Wood Plants to agree with all the terms of Eversource's November 6, 2018 solicitation (which thwarted

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88 Order, p. 18.

89 2018 N.H. Laws Ch. 379:1 (Findings). *See also* Order, pp. 1-2 (quoting the entire "Findings" of the General Court).

the first attempt at implementation of RSA 362-H). Nor does it require the Wood Plants to agree with any of Eversource's ever-changing business terms and now its demand for its escrow provision (which continues to thwart the implementation of RSA 362-H). Rather, Eversource's solicitation merely notifies the Wood Plants of the "opportunity to submit a proposal to enter into a power purchase agreement with" Eversource[90] and need only contain the statutory terms set forth in RSA 362-H:2, I(a) and (b). After receiving the statutory notice required by Eversource's solicitation, the Wood Plants may, but need not, submit proposals for Eversource's purchase of their energy. Just as the solicitation must contain certain statutory terms, so too must the proposals contain the terms set forth in RSA 362-H:2, II. Thereafter, the process for achieving the statutorily mandated power purchase agreements is straight forward, and leaves Eversource with no discretion:

> With each eligible facility solicitation, the electric distribution company **shall select all proposals** from eligible facilities **that conform to the requirements of this section**. The electric distribution company **shall submit all eligible facility agreements to the commission** as part of its submission for periodic approval of its residential electric customer default service supply solicitation.[91]

Accordingly, if the Wood Plants' January 31, 2019 Proposals "conform to the requirements of" RSA 362-H:2, which they do as further determined by the Order, then Eversource "shall select" them as the mandated power purchase agreements and submit them to the Commission for its review. Thereafter, "[a]ll such eligible facility agreements shall be subject to review by the commission for conformity with this chapter in the same proceeding in

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90 RSA 362-H:2, I.

91 RSA 362-H:2, III (emphasis added).

which it undertakes the review of the electric distribution company's periodic default service solicitation and resulting rates."[92]

Reading RSA 362-H's language in accordance with its plain and ordinary meaning and construing all parts of the statute as a whole, including the General Court's "Findings," it is clear that the Commission may make such orders as are necessary "to effectuate its overall purpose and avoid an absurd or unjust result."[93] Here, the overall purpose of RSA 362-H is to mandate power purchase agreements to support "at-risk" eligible facilities while also supporting the State's economy in certain regions and its energy policy, by requiring Eversource to select proposals that conform to the statutory requirements. An order directing Eversource to comply with RSA 362-H by selecting and submitting the agreements for review will simply effectuate the overall purpose of RSA 362-H while at the same time avoiding the unjust and unlawful result that Eversource seeks (*i.e.*, avoidance of its statutory obligation to purchase energy from eligible facilities) and is continuing to cause whereby it has effectively nullified the purpose, language and policy of RSA 362-H by refusing to follow the law.

Because Eversource and Wood Plants have successfully negotiated the January 31, 2019 Proposals (with the exception that Eversource refuses to select and submit them as agreements unless its statutorily impermissible escrow provision is imposed therein), the Commission has the authority and an obligation to order Eversource to comply with RSA 362-H by selecting and

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92 RSA 362-H:2, IV.

93 *Appeal of Algonquin*, 170 N.H. at 770.

submitting the January 31, 2019 Proposals as the mandated power purchase agreements for its RSA 362-H conformity review, "whether signed or unsigned".[94]

Thus, the Commission should grant the rehearing requests set forth in the Wood Plants' requests for relief to avoid the unlawful result that Eversource has created, in derogation of the language, purpose and policy of RSA 362-H.

C. The Commission erred by determining that it lacked the authority to give rate recovery to Eversource.

The Commission erred when it determined that RSA 362-H:2, V already "expressly allows [Eversource] to recover any above market costs of purchases from eligible facilities as part of a nonbypassable charge to all electric delivery customers," but that "[w]hile a federal preemption challenge to the legality of RSA 362-H remains unresolved [] we are not willing to separately order recovery of stranded costs from Eversource customers for the reasons explained below."[95] FERC is not required to rule on the petition submitted by NERA, has not ruled in any event in the time requested by February 1, 2019, and even if it does rule such an order in and of itself would have "no legal moment unless and until a district court adopts that interpretation".[96]

Meanwhile, RSA 362-H is a valid state law presently in effect and must be implemented according to its terms. The positions advanced by Eversource on rate recovery could be said of

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94 *See id.* (construing all parts of a statute together "to effectuate its overall purpose and avoid an absurd or unjust result," in light of the policy or purpose sought to be advanced by the statutory scheme).

95 Order, p. 24.

96 "An order that does no more than announce the Commission's interpretation of the PURPA or one of the agency's implementing regulations is of no legal moment unless and until a district court adopts that interpretation when called upon to enforce the PURPA." *Xcel Energy Servs. Inc. v. F.E.R.C.*, 407 F.3d 1242, 1244 (D.C. Cir. 2005) (Ginsburg, J.) (quoting *Niagara Mohawk Power Corp. v. F.E.R.C.*, 117 F.3d 1485, 1488 (D.C. Cir. 1997).

any law that might be challenged, which is merely to say that any law might be challenged. But the mere possibility of challenge does not invalidate a law or the need to implement a law, nor does the Order constitute a "roadblock" in this or any other sense. Moreover, in the unlikely event that a court of competent jurisdiction does determine that the mandatory purchase obligations in RSA 362-H are preempted, that would not necessarily mean rate recovery is preempted, particularly where, as here, Eversource would have purchased energy in compliance with existing law.

Thus, the Commission should grant rehearing to determine that the Order does not constitute a "roadblock" to the implementation of RSA 362-H and that the Commission does not lack authority to give rate recovery to Eversource where RSA 362-H:2, V already provides such recovery, and those statutory terms are incorporated directly into the Wood Plants' proposals including the January 31, 2019 Proposals.

V. Conclusion.

WHEREFORE, with regard to the Motion for Clarification, the Wood Plants respectfully request that the Commission:

A. Clarify that the January 31, 2019 Proposals conform to the requirements of RSA 362-H;

B. Clarify that Eversource is required to select an eligible facility proposal that contains all the terms required by and conforms with RSA 362-H;

C. Clarify that Eversource is required to submit an eligible facility agreement to the Commission, "whether signed or unsigned," when the eligible facility proposal contains all the terms required under RSA 362-H and conforms with RSA 362-H;

D. Clarify that if the January 31, 2019 Proposals had been selected by Eversource and submitted to the Commission as the mandated agreements, then it would have determined that they conform with the provisions of RSA 362-H;

E. Clarify that the January 31, 2019 Proposals conform to RSA 362-H, "whether signed or unsigned," and must be implemented by Eversource as the agreements required by RSA 362-H;

F. Clarify that no "roadblock" exists to the implementation of RSA 362-H including because, where rate recovery is already provided for by RSA 362-H:2, V and incorporated directly into the proposals, Eversource does not need a separate order on recovery from the Commission;

G. Clarify, as a matter of giving effect to the plain meaning of RSA 362-H, that Eversource cannot refuse to select otherwise conforming proposals simply because they do not include the security provision demanded by Eversource, including in particular where that provision is contrary to RSA 362-H;

H. Clarify, as a matter of giving effect to the plain meaning of RSA 362-H, that Eversource cannot refuse to select otherwise conforming proposals simply because the Commission might not separately order rate recovery;

I. Clarify that the failure to select and submit conforming proposals (including now the January 31, 2019 Proposals) to the Commission leaves Eversource in violation of RSA 362-H; and

J. Clarify that if the Commission is or becomes of the opinion that Eversource is failing to comply with RSA 362-H, then it may direct the New Hampshire

Attorney General to begin an action in the name of the State praying for appropriate relief by mandamus, injunction or otherwise;

AND, IN THE ALTERNATIVE, with regard to the Motion for Rehearing, the Wood Plants respectfully request that the Commission:

K. Grant rehearing to determine that the proposals (including now the January 31, 2019 Proposals) conform with the requirements of RSA 362-H;

L. Grant rehearing to determine that an electric distribution company is required to select an eligible facility proposal that contains all the terms required under RSA 362-H and conforms with RSA 362-H;

M. Grant rehearing to determine that an electric distribution company is required to submit an eligible facility agreement to the Commission, "whether signed or unsigned," when the eligible facility proposal contains all the terms required under RSA 362-H and conforms with RSA 362-H;

N. Grant rehearing to determine that Eversource is required to comply with RSA 362-H by selecting conforming proposals and submitting them as the mandated agreements to the Commission for its review, in order to avoid the unreasonable, unlawful and unjust result created, in derogation of the requirements, language, purpose and policy of RSA 362-H, by Eversource's refusal to comply with the requirements of RSA 362-H;

O. Grant rehearing to determine that the Commission has the authority and obligation to order Eversource to comply with RSA 362-H by selecting the January 31, 2019 Proposals and submitting them "whether signed or unsigned" as the mandated power purchase agreements for its RSA 362-H conformity review;

P. Grant rehearing to determine that the failure to submit conforming proposals (including now the January 31, 2019 Proposals) to the Commission leaves Eversource in violation of RSA 362-H; and

Q. Grant rehearing to determine that the Order does not constitute a "roadblock" to the implementation of RSA 362-H and that the Commission does not lack authority to give rate recovery to Eversource where RSA 362-H:2, V already provides such recovery, and those statutory terms are incorporated directly into the Wood Plants' proposals including the January 31, 2019 Proposals;

AND,

R. Grant such further relief as is just and necessary.

Respectfully submitted,

SPRINGFIELD POWER LLC,
DG WHITEFIELD LLC,
BRIDGEWATER POWER COMPANY L.P.,
PINETREE POWER TAMWORTH LLC, AND
PINETREE POWER LLC

By Their Attorneys,

SHAHEEN & GORDON, P.A.

Date: February 8, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on this February 8, 2019, I caused this Motion to be filed in hand and electronically to the Commission and electronically, or by U.S. Mail, First Class, to the persons identified on the Commission's Service List for this docket in accordance with N.H. Admin. R. Puc 203.11 including by ensuring receipt of service by the other parties by 4:30 p.m. on this date.

Timothy J. McLaughlin

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